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11 | Attorneys for Plaintiff
12 FACEBOOK, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FACEBOOK, INC.,

Plaintiff,

1

20 POWER VENTURES, INC. a Cayman Island
21 corporation, STEVE VACHANI, an individual;
22 DOE 1, d/b/a POWER.COM, DOES 2-25,
inclusive.

Defendants

Case No. 5:08-cv-05780-LHK

FACEBOOK, INC.'S UNOPPOSED
MOTION, PURSUANT TO ORDER OF
THE NINTH CIRCUIT, CIVIL LOCAL
RULE 7-11, AND THE
CONCURRENTLY FILED
STIPULATION OF THE PARTIES,
FOR ADMINISTRATIVE RELIEF TO
UNSEAL CERTAIN MATERIALS AND
TO FILE PREVIOUSLY LODGED
EXPERT REPORT

Dept: Courtroom 8, 4th Floor
Judge: Hon. Judge Lucy H. Koh

1 Pursuant to Civil Local Rule 7-11, the May 23, 2014 Order of the Ninth Circuit (attached
 2 as **Exhibit A**) granting a remand for the limited purpose of unsealing certain materials and
 3 updating the record, and this Court's Order Directing Parties To File Stipulation To Expand The
 4 Record And Motion For Leave To Unseal Documents (Dkt. No. 393), Plaintiff Facebook, Inc.
 5 submits this Administrative Motion to unseal certain documents previously sealed by this court,
 6 and to file an expert report previously lodged in this Court. The parties' stipulation concerning
 7 this proposed relief is being concurrently filed with this motion.

8
 9 In support of this motion, Facebook states as follows:

10 1. In 2008, Facebook brought this suit against Defendants under, among other
 11 statutes, the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030, California Penal Code
 12 § 502, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003
 13 (CAN-SPAM Act), 15 U.S.C. § 7701. This Court entered summary judgment in favor of
 14 Facebook, Dkt. No. 275, and granted Facebook damages and injunctive relief, Dkt. No. 372.

16 2. Defendants' appeal is pending before the Ninth Circuit. *See* 9th Cir. Case Nos. 13-
 17 17102, 13-17154. Defendants have filed their opening brief. Prior to Facebook filing its
 18 answering brief, the parties filed in the Ninth Circuit a stipulation to correct the record on appeal
 19 to include the Expert Report of Bob Zeidman and Lawrence Melling. *See* **Exhibit B** (9th Cir.
 20 Stipulation). This Report had been lodged in this Court, but not formally filed, pursuant to a
 21 standing order of then-Chief Judge Ware. This report was before this Court when it ruled on
 22 Facebook's motion for summary judgment, and this Court cited the report in its summary
 23 judgment order. *See* Dkt. No. 275 at 15-16 & 15 n.37.

25 3. Facebook also filed in the Ninth Circuit an unopposed motion to unseal certain
 26 record materials it intends to discuss in its answering brief and include in its Supplemental
 27 Excerpts of Record on appeal. *See* **Exhibit C** (9th Cir. Motion). These materials had been sealed
 28

1 by this Court at the request of both Facebook and Defendants, and so absent any action of the
 2 parties or the court, would remain sealed on appeal (*see* Ninth Cir. R. 27-13, Adv. Comm. Note).
 3 In the view of the parties, however, these materials no longer need to be sealed due to the passage
 4 of time, and in light of the Ninth Circuit's admonitions about the limited circumstances under
 5 which materials may be sealed on appeal. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665,
 6 678-79 (9th Cir. 2010).

8 4. On May 23, 2014, the Ninth Circuit issued an order construing the "stipulation to
 9 correct the record . . . as a motion for a remand to expand the record and, so construed," granted
 10 the motion. Ex. A (9th Cir. Order), at 1. The Court "remanded to the district court for the limited
 11 purpose of enabling the district court to consider the motion to expand the district court record to
 12 include the expert report of Bob Zeidman and Lawrence Melling that was lodged with and
 13 reviewed by the district court in ruling on the parties' motions for summary judgment." *Id.* at 1-
 14 2. In addition, with regard to Facebook's unopposed motion to unseal certain documents, the
 15 Court "denied [the motion] without prejudice to renewal after seeking leave from the district
 16 court to unseal the documents." *Id.* at 2.

18 5. On May 27, 2014, this Court ordered the parties to act upon the Ninth Circuit's
 19 limited remand order by June 4, 2014, at noon. Dkt. No. 393.

21 6. Pursuant to the Ninth Circuit's limited remand and this Court's Order, Facebook
 22 moves this Court to expand the record to include the expert report of Bob Zeidman and Lawrence
 23 Melling that was lodged with and reviewed by the district court in ruling on the parties' motions
 24 for summary judgment. This will allow the Ninth Circuit to consider, as part of the record on
 25 appeal, relevant materials that were before this Court when it issued one of the orders now on
 26 review by the Ninth Circuit. The parties stipulate to this request. *See* Stipulation and Proposed
 27 Order, filed concurrently with this motion.

1 7. Pursuant to the Ninth Circuit's limited remand, Facebook also moves this Court to
 2 unseal certain documents previously sealed by this Court, which describe Facebook's security
 3 systems and the way Defendants' computer program interacted with Facebook. The parties are in
 4 agreement about this request as well, *see* Stipulation and Proposed Order, because the sensitivities
 5 that once made it necessary for these materials to be kept confidential no longer exist, and thus
 6 the burden on the Court, the parties, and the public of limiting access to these documents is no
 7 longer justified.

8 In particular, the documents sought to be unsealed are:

Dkt. No.	Description	Sealing Originally Requested By	Order Sealing
213-2	Declaration of Facebook Attorney Joseph Cutler	Facebook (<i>See</i> Dkt. No. 167)	Dkt. No. 182
213-4	Declaration of Facebook Security Manager Ryan McGeehan	Facebook (<i>See</i> Dkt. No. 167)	Dkt. No. 182
217	Declaration of Facebook Expert Lawrence Melling (main declaration only to be unsealed, not attachments [Dkt. Nos. 217-1 to -13])	Defendants (<i>See</i> Dkt. No. 168)	Dkt. No. 203
300-1	Excerpts of Expert Report of Richard J. Ostiller	Facebook (<i>See</i> Dkt. No. 290)	Dkt. No. 296
372	Unredacted Version of This Court's "Order Denying Leave To File Motion For Reconsideration, Finding Defendant Steven Vachani Liable As A Matter Of Law, And Granting Damages And Permanent Injunctive Relief"	This Order was sealed because it stated the amount of Facebook's damages described in Dkt. No. 300-1.	n/a
n/a	Expert Report of Bob Zeidman and Lawrence Melling, previously lodged with this Court under seal (main report only to be unsealed, not exhibits)	Defendants	n/a

27 **CONCLUSION**

28 For the foregoing reasons, the Administrative Motion to unseal certain documents

1 previously sealed by this court and to file an expert report previously lodged in this Court,
2 pursuant to the stipulation of the parties, should be granted.

3 Dated: May 28, 2014

4 ORRICK, HERRINGTON & SUTCLIFFE LLP

5 By: */s/ I. Neel Chatterjee*
6 I. Neel Chatterjee
7 Attorneys for Plaintiff
FACEBOOK, INC.

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